

JORDAN ROSENFELD

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the
use of POONG LIM/PERT JOINT VENTURE,

Plaintiff,

vs.

DICK PACIFIC/GHEMM JOINT VENTURE,
CONTINENTAL CASUALTY COMPANY,
NATIONAL FIRE INSURANCE CO. OF
HARTFORD, SEABOARD SURETY CO.,
and ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Defendants.

Case No. A03-0290 Civil

DEPOSITION OF JORDAN ROSENFELD

Pages 1 - 126, inclusive

Tuesday, May 31, 2005, 9:35 A.M.

Taken by Counsel for Defendants

at

Law Offices of Oles, Morrison, Rinker & Baker, LLP

745 W. Fourth Avenue, Suite 502

Anchorage, Alaska

EXHIBIT 5
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| <p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2 For Plaintiff:</p> <p>3 LAW OFFICES OF OLES, MORRISON, RINKER & BAKER, LLP</p> <p>4 By: Julia M. I. Holden, Esq.</p> <p>5 745 West Fourth Avenue, Suite 502</p> <p>6 Anchorage, AK 99501</p> <p>7 907/258-0106</p> <p>8</p> <p>9 For Defendants:</p> <p>10 LAW OFFICES OF DAVISON & DAVISON</p> <p>11 By: Joseph A. Pollock, Esq.</p> <p>12 3351 Arctic Boulevard</p> <p>13 Anchorage, AK 99503</p> <p>14 907/563-6555</p> <p>15</p> <p>16 Also Present:</p> <p>17 Michael R. Hanrahan</p> <p>18</p> <p>19 Reported by:</p> <p>20 Angela Peronto, CSR, RMR</p> <p>21 Summit Court Reporting, LLC</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1</p> <p>2 Anchorage, Alaska, Tuesday, 5/31/05, 9:35 A.M.</p> <p>3 JORDAN ROSENFELD,</p> <p>4 deponent herein, being sworn on oath by Angela</p> <p>5 Peronto, was examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. POLLOCK:</p> <p>8 Q. Mr. Rosenfeld, we met before the</p> <p>9 deposition. My name is Joe Pollock. I'm an</p> <p>10 attorney for Dick Pacific/Ghemm joint venture and</p> <p>11 the four Miller Act sureties in the Poong Lim/Pert</p> <p>12 case.</p> <p>13 Today is the day that has been</p> <p>14 scheduled for your deposition surrounding the expert</p> <p>15 report that you've prepared in this case.</p> <p>16 Have you had your deposition taken</p> <p>17 before?</p> <p>18 A. Yes, I have.</p> <p>19 Q. How many times?</p> <p>20 A. About 25, maybe 30 times.</p> <p>21 Q. And of those depositions, how many were</p> <p>22 in the furtherance of providing expert testimony?</p> <p>23 A. Most of them, probably all but one or</p> <p>24 two.</p> <p>25 Q. So you're familiar with the process, as</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <p>1 I-N-D-E-X</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Mr. Pollock 4</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E-X-H-I-B-I-T-S</p> <p>9</p> <table border="1"> <thead> <tr> <th>NUMBER</th><th>PAGE</th></tr> </thead> <tbody> <tr> <td>537</td><td>Rosenfeld Expert Opinion Report 6</td></tr> <tr> <td>538</td><td>Jens Expert Report Rebuttal 7</td></tr> <tr> <td>539</td><td>Handwritten Notes 15</td></tr> <tr> <td>540</td><td>Sutor Consulting Invoices 24</td></tr> <tr> <td>541</td><td>Bassett Hospital "ABC" Contract 51</td></tr> <tr> <td>542</td><td>Cost List</td></tr> <tr> <td>543</td><td>Poong Lim/Seijin Agreement 80</td></tr> <tr> <td>544</td><td>Profit Markup Summary 94</td></tr> <tr> <td>545</td><td>Bassett Hospital Project Replacement Spreadsheet 94</td></tr> <tr> <td>546</td><td>Non-Consolidated Financial Statements/Excerpt 105</td></tr> <tr> <td>547</td><td>Monthly Structural Steel Payroll Summary 111</td></tr> <tr> <td>548</td><td>Status of Manhour Analysis 114</td></tr> <tr> <td>549</td><td>Manhour by Trade 117</td></tr> <tr> <td>550</td><td>12-11-04 Letter to Gun Lee from Jordan Rosenfeld 118</td></tr> </tbody> </table> <p>25</p> | NUMBER | PAGE | 537 | Rosenfeld Expert Opinion Report 6 | 538 | Jens Expert Report Rebuttal 7 | 539 | Handwritten Notes 15 | 540 | Sutor Consulting Invoices 24 | 541 | Bassett Hospital "ABC" Contract 51 | 542 | Cost List | 543 | Poong Lim/Seijin Agreement 80 | 544 | Profit Markup Summary 94 | 545 | Bassett Hospital Project Replacement Spreadsheet 94 | 546 | Non-Consolidated Financial Statements/Excerpt 105 | 547 | Monthly Structural Steel Payroll Summary 111 | 548 | Status of Manhour Analysis 114 | 549 | Manhour by Trade 117 | 550 | 12-11-04 Letter to Gun Lee from Jordan Rosenfeld 118 | <p>1 far as how a deposition works?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. I'll be asking you a series of</p> <p>4 questions. You're under oath, and the testimony you</p> <p>5 provided today can be used in the litigation that's</p> <p>6 pending here in federal district court.</p> <p>7 If you don't understand a question that</p> <p>8 I ask, please just let me know, and I'll rephrase</p> <p>9 the question. But it's important that you</p> <p>10 understand the question.</p> <p>11 We're also trying to prepare a written</p> <p>12 transcript of your verbal testimony today. So it's</p> <p>13 important that you answer yes or no as opposed to</p> <p>14 uh-huh or huh-uh, that we might in casual</p> <p>15 conversation.</p> <p>16 It's also important that you allow me</p> <p>17 to complete my question before you answer so that</p> <p>18 the transcript is clear as to who is talking at a</p> <p>19 given time.</p> <p>20 Those are the basic ground rules.</p> <p>21 We'll take a series of breaks. I think we're</p> <p>22 scheduled for a three-hour deposition today. I</p> <p>23 think we'll take a break every 45 minutes to an</p> <p>24 hour. But for whatever reason, if you need to take</p> <p>25 a break, let me know, and we'll take a break.</p> |
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| <p style="text-align: right;">Page 74</p> <p>1 to the original contract, taking the difference, and 2 saying that's your damages? 3 Q. Yes. 4 A. For the subcontractors. That -- yes. 5 Q. That would be a total cost analysis in 6 your view? 7 A. Yes. 8 Q. Okay. 9 So I guess my question again is what 10 damages did Poong Lim suffer if it paid its 11 subcontract laborers on a unit-price-per-ton basis? 12 What damages did Poong Lim suffer for that work? 13 MS. HOLDEN: Objection, assumes facts 14 not in evidence. 15 THE WITNESS: Yeah, I guess I can't 16 answer the question. Because obviously if it was 17 just on a unit-price-per-ton and the tons were the 18 same, the subcontract amounts wouldn't have gone up. 19 And it's obvious from the schedule, they did go up. 20 So I just -- I don't see any basis for your 21 question. 22 BY MR. POLLOCK: 23 Q. You have no reason -- you have no 24 understanding of why the contract amounts went up; 25 correct?</p> | <p style="text-align: right;">Page 76</p> <p>1 is now about 17,000 hours. So the rate has been 2 reduced. 3 Q. Why did the number change? 4 A. Based on new information I received 5 from Mr. Schwartz as to what the original estimate 6 of the hours was for the detailing. 7 Q. Did you -- so for, if you start up on 8 the top, you took the Sejin subcontract amount of 9 325,000 won; correct? 10 A. Correct. 11 Q. And the contract tonnage. And those 12 items were -- those numbers were derived from the 13 Sejin subcontract? 14 A. Yes. 15 Q. And the estimated hours of 14,000 hours 16 changing to 17,000 hours, where did that number come 17 from? 18 A. The 14,000 or the 17? 19 Q. Either one. 20 A. The 14,000 came from a schedule that 21 was provided by Poong Lim, a summary they had. The 22 17,000, as I said, was a schedule I received from 23 Mr. Schwartz. 24 Q. Did you ever discuss with anyone from 25 Sejin their estimate relative to the hours that they</p> |
| <p style="text-align: right;">Page 75</p> <p>1 A. Correct. 2 Q. And you're not sure whether the 3 subcontract laborers were paid -- companies were 4 paid on a unit-price-per-ton basis; correct? 5 A. Correct. 6 Q. Assuming that they were paid on a 7 unit-price-per-ton basis, and that Poong Lim paid 8 them the unit price for the work that they 9 performed, what, if any, damages, in your view, 10 would Poong Lim have suffered as a result -- what, 11 if any, damages would Poong Lim have suffered? 12 A. Again, they suffered for the extra 13 costs they incurred paying the subcontractors, 14 however they arrived at that amount. And they did 15 incur extra costs. 16 Q. And you would agree that the -- what 17 would be the Sejin hourly rate? How did you arrive 18 at the Sejin hourly rate? 19 A. Well, in the report the Sejin hourly 20 rate determines the cost per ton -- I mean, the 21 hours per ton and then multiplies that times the 22 budgeted hours. 23 This is one of the items that has been 24 changed in the schedules, the new schedules we've 25 given you. It has a different estimated hours. It</p> | <p style="text-align: right;">Page 77</p> <p>1 planned to expend in detailing the project? 2 A. I didn't, because Mr. Schwartz was 3 having that discussion with him. 4 Q. Did you -- what was your understanding 5 with talking to Mr. Schwartz regarding Sejin's 6 estimate of detailing hours? 7 A. I can't recall at this point. I think 8 when he provided me the schedule, he went through 9 that schedule so he could give me -- tell me what 10 the hours were for the original estimate of the 11 detailing. 12 Q. Was that schedule -- 13 A. I -- 14 Q. I'm sorry. Go ahead. 15 A. Other than that, I can't remember what 16 else we discussed. 17 Q. Was that schedule contained in 18 Mr. Schwartz's report? 19 A. I don't believe it was. I can't say. 20 I can't remember everything that was in his report. 21 Q. Did you ever review a Sejin estimate 22 for the work -- 23 A. No. 24 Q. -- for the detailing? 25 A. No.</p> |

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20 (Pages 74 to 77)

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1 Q. So in -- is it accurate that in the
2 14,000- or the 17,000-hour figure, those hours came
3 exclusively from -- were either provided to you by
4 Mr. Schwartz or by Poong Lim; is that correct?

5 A. Correct.

6 Q. Did you perform any independent
7 investigation to determine the reasonableness of
8 those estimated hours?

9 A. No.

10 Q. Is your answer the same as to the
11 estimated tonnage, the 4,422?

12 A. Well, the tonnage is right off of the
13 contract. So that could be verified, though the
14 tonnage doesn't figure into my revised calculation
15 at all.

16 Q. And the estimate hours per ton, is that
17 a mathematical function?

18 A. Yes.

19 Q. Based on which two numbers?

20 A. That would be the 14,000 hours divided
21 by the 4400 tons.

22 Q. And the contract hours, where did that
23 number come from?

24 A. That would be the \$3.20 hours per ton
25 times 4,499 tons.

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1 Q. Mr. Rosenfeld, we've handed you what
2 has been identified as Exhibit --

3 A. 527.

4 Q. 527 to this series of depositions.
5 Have you seen this report before?

6 A. I have not seen this whole binder
7 before.

8 Q. What do you believe this report is?

9 A. It's Mr. Schwartz's expert report.

10 Q. Can you please take a look at Exhibit
11 20, please. Have you seen Exhibit 20 before?

12 A. Yes.

13 Q. What do you believe Exhibit 20 to be?

14 A. It's a detailing manhour summary.

15 Q. Did you say you'd seen this before?

16 A. Yes.

17 Q. The estimated detailing labor hours are
18 identified as 21,000 and change; correct?

19 A. Yes.

20 Q. But your estimate hours in your report
21 are approximately 14,000 and change; correct?

22 A. That's in my initial report, yes.

23 Q. Do you have an explanation of the
24 discrepancies between those two numbers?

25 A. Well, part of the 21,000 is for items

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1 not included in the 325-million-won contract amount.

2 Q. Which items are those?

3 A. The items that are not or are in
4 included? Well, let's -- the ones that are included
5 would be the first two items for 7,000 hours, 9500
6 hours, and the last item of 500 hours. The other
7 three are not.

8 Q. Steel stairs, exterior wall supports,
9 and erection aids, it's your understanding that
10 those amounts are not included in the 325,000?

11 A. Yes.

12 Q. Are you aware of any other
13 discrepancies that would --

14 A. No.

15 Q. -- justify the difference between the
16 two numbers?

17 A. No.

(Exhibit 542 marked.)

19 BY MR. POLLOCK:

20 Q. Mr. Rosenfeld, we've handed you what
21 has been identified as Exhibit 542 to your
22 deposition. Have you seen this document before?

23 A. Yes.

24 Q. And what is this document?

25 A. This is the agreement between Poong Lim

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1 and Sejin.

2 Q. And, in looking through this sequence
3 of documents, does this lead you to conclude that
4 exterior wall supports, stairs, steel stairs, and
5 erection aids are or are not included in the
6 \$325,000 number?

7 A. I don't know.

8 Q. If the estimated hours -- if, in
9 looking at your report on page 3 and your cost per
10 hour for Sejin, if the estimated hours were higher,
11 what would the effect of that be on the contract
12 rate -- contract dollar per hour?

13 A. That would lower the rate.

14 Q. And how much did Sejin get paid? Do
15 you know?

16 A. I don't know the answer to that
17 offhand.

18 Q. Take a look at your gross profit
19 analysis sheet attached to your report, item 766,
20 outsourcing design. Do you see that number?

21 A. Yes.

22 Q. Do you think that the category,
23 outsourcing design, No. 766, with a total of 311,000
24 through 2003, do you believe that that is the amount
25 that Poong Lim paid to Sejin for detailing?

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21 (Pages 78 to 81)

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